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AUTHOR Middleton, Kent; And Others
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ABSTRACT

The content of pretrial crime stories in a national sample of 29 newspapers was analyzed to discover the extent of violations of the voluntary free-press fair-trial guidelines of the American Bar Association (ABA), which have been adopted by 23 states. The investigation also considered the relationship between violations and several relevant factors such as whether the newspaper containing the violation was published in a state subscribing to the ABA guidelines, the sensationalism of the crime, whether sources of news about the suspect are named, and racial identification of the suspect. Of the 167 pretrial crime news stories selected for analysis, 113, or 67.8%, contained at least one violation of an ABA guideline. The overall rate of 1.13 violations per story was higher than previous research had indicated. In addition, the findings showed no discernable difference between the number of violations in states which had adopted the guidelines and those which had not. So few sensational stories were found that no analysis of this factor could be made. The same is true of the factor of racial identification, since none of the stories mentioned the race of the accused. The rate of identification of sources was nearly the same for stories with violations and those without. (FL)

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Compliance With the American Bar Association's Voluntary Free Press-Fair Trial Guidelines: An Empirical Study

By

Kent Middleton, Assistant Professor
James W. Tankard, Jr., Associate Professor
Tony Rimmer, Doctoral Candidate

Department of Journalism
University of Texas
Austin, TX. 78712

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Compliance With the American Bar Association's Voluntary Free Press-Fair Trial Guidelines: An Empirical Study

On August 15, 1977, Rupert Murdoch's New York Post ran a front page story headlined: "How I Became A Mass Killer." The byline belonged to David Berkowitz who had been arrested a few days before in the murder of six with a .44 caliber handgun. The Post story, which consisted of letters he had sent to a former girlfriend, was only the most sensational of a series of articles in New York papers reporting the search for the "Son of Sam" and his arrest. Included in that coverage were admissions Berkowitz made to the police and speculation on Berkowitz's character and motives.[1]

Even before Berkowitz's lawyer first entered a plea of not guilty, critics were asking once again how a defendant could get a fair trial after sensational stories proclaimed his guilt nationwide. Coverage of the Berkowitz case illustrates that at least in highly emotional cases of great public interest, the voluntary press-bar guidelines for responsible

pre-trial coverage are easily ignored. In 1969, the New York Fair Trial Free Press Conference, of which the Post was a member, adopted guidelines which included the provision that no one "make, publish or broadcast a statement designed to influence, forecast or prejudge the outcome of a trial."[2]

Twenty-three states have adopted voluntary press-bar guidelines for crime coverage. The American Bar Association's composite of these guidelines recommends that the media not disseminate information about confessions, prior criminal charges or convictions, references to the results of polygraph or other tests and opinions about evidence or the accused's character. Information that can be printed, according to the guidelines, includes the accused's name, age, residence, the identity of the arresting officers, the charge and information about the circumstances of the arrest.[3]

Research has not established conclusively that prejudicial information before and during a trial biases a juror. Much of the behavioral research is of limited value because it necessarily must be conducted under artificial conditions. Although "[e]xperiments to date indicate that for the most part juries are able and willing to put aside extraneous information and base their decisions on the evidence,"[4] some research indicates that prejudicial information seen in the press may persist in the mind of the juror even after he or she is exposed to contrary information during trial.[5] Re-

search also suggests that reports of a suspect's confession and criminal record have the greatest potential to prejudice a juror.[6] In the absence of conclusive evidence that pre-trial publicity does not prejudice jurors, judges have assumed it does. In several cases, the Supreme Court has overturned convictions where publicity has been particularly shrill or extensive, even though there was no proof of bias.[7]

Fortunately, coverage like that in the Berkowitz case, which totally ignores the defendant's interest in a fair trial, is the exception. Not only are most crime reports less prejudicial than the Berkowitz coverage, most crime is not covered at all. Of 11,724 felonies recorded in one month in New York City, only 41 were mentioned in the New York Daily News, a paper not opposed to playing up an interesting crime story.[8] Warren and Abell reported that of more than 1.25 million arrests in California in 1969, only .25% resulted in felony jury trials. Many fewer received any publicity and a tiny fraction of the total got publicity that might be considered prejudicial.[9]

What role have the voluntary press-bar guidelines played in promoting generally responsible coverage of crime in the nation's press? Washington state judges concluded several years after adoption of the guidelines that there had been a "dramatic change in content, method, and technique of news reporting.... Self-restraint is being exercised by the newspapers

uniformly and consistently."[10] Roy Mitchell concluded that "[p]erhaps unexpectedly, guidelines do work. In those states with substantial experience with guidelines the reporting of crime news had undergone a great transformation."[11]

Although the guidelines have been viewed favorably in some places, it has not been determined whether daily newspapers in states with press-bar guidelines tend to print less prejudicial information than states without guidelines. It is known that in the exceptional case like the Berkowitz affair, the media in most states have lapses of judgment and fairness. But it is not known whether the daily coverage of average crimes is handled in a more restrained, responsible manner in states with voluntary guidelines.

This study examines the rate of violation of the ABA's composite guidelines in pre-trial crime coverage in a national probability sample of daily newspapers. Not all the state guidelines are as restrictive as the ABA composite. California's guidelines, for instance, focus on confessions and prior criminal records, two of the six types of information the ABA composite would prohibit.[12] The ABA composite guidelines were used in this study because they are similar to those in many states and because they are the closest thing available to a national standard. The study is limited to pre-trial coverage because the ABA's six composite guidelines for information that should not be published are aimed at preventing

prejudicial publicity before trial.[13] It is between the time of arrest and the beginning of a trial that the press is freest to disseminate potentially prejudicial information.

The study looks at the relationship between violations of press-bar guidelines and several relevant factors: whether the state where the newspaper is published has a press-bar agreement, sensationalism of stories, whether sources are named, and racial identification of the accused.

The following hypotheses were investigated:

H1: Violation of ABA guidelines will occur more frequently in states without voluntary press-bar agreements than in states with agreements.

H2: Sensational crimes are more likely to be reported with violations of ABA guidelines than non-sensational crimes.

H3: In pre-trial stories in which the race of the accused is identified, minority group suspects are more likely to be reported with violations of ABA guidelines than white suspects.

H4: Sources of news about a suspect are less likely to be named when guidelines are violated than they are when guidelines are not violated.

Method

Pre-trial crime news reporting was examined in a subsample from a national probability sample of 29 newspapers

subscribed to for roughly a 5-week period beginning June 15, 1976.[14] The original sample was stratified according to circulation, so that large-circulation newspapers had a higher probability of being selected than small-circulation newspapers. Such a sample represents what the average newspaper reader in the United States would be presented with.[15] The sub-sample for this study was made up of three randomly selected issues of each newspaper, or 87 issues.

All issues were searched for pre-trial crime news stories. A pre-trial crime news story was defined as a news story dealing primarily with a specific person (identified by name) who has been charged with a crime or who is under investigation by police. Excluded were stories with foreign datelines, trial stories, civil suits and cases in which the accused was killed or committed suicide. Also excluded were "news briefs", defined as news stories that were three paragraphs or shorter.

Each issue was searched by two coders, with coders A and B doing half and coders A and C doing the other half. The percentage of agreement for finding pre-trial crime news stories was 82% for coders A and B and 85% for coders A and C.[16] Only those stories selected by both coders examining an issue were included in the sample of stories to be further analyzed. This yielded a sample of 167 pre-trial crime news stories.

Coders not familiar with the hypotheses of the study then read the 167 stories and coded them for violations of

the ABA guidelines, sensationalism, race of the accused, whether a source was named, whether there was rebuttal material from the accused or his lawyer or an attempt to get this material, and story length. A sensational story was defined as one dealing with sex or murder, carrying a headline of 48 point type or greater and appearing on pages 1-3. The four coders for this phase each received a packet containing photocopies of roughly one-fourth of the stories, except that ten randomly selected stories appeared in all packets to allow a coder reliability check. The percentage of agreement on the ten stories for all coding decisions averaged across all possible pairs of coders was 80%.[17]

The 29 newspapers in the sample came from 21 states. There were 16 titles from states with press-bar agreements and 13 from states with no agreements.

Results

Of the 167 stories examined, 113, or 67.7%, contained at least one violation of an ABA guideline (Table 1). There were 188 violations, or, on the average, 1.13 per story.

Table 1 About Here

The guideline violated most frequently (in 35.3% of the stories) was the one cautioning against publishing opinions about an accused's character, guilt or innocence (Table 2).

The guideline violated least frequently (in 2.4% of the stories) was the one cautioning against publishing references to the results of any examinations or tests, such as fingerprints, polygraph examinations, ballistics or laboratory tests.

The kind of information that research indicates may be most damaging to a fair trial -- admissions, confessions or statements by the accused -- appeared in 12.0% of the stories. The next most injurious kind of publicity -- reports of prior criminal charges and convictions -- appeared in 12.6% of the stories.

Table 2 About Here

Hypothesis 1, which suggested that violations of ABA guidelines will occur more frequently in states without voluntary press-bar agreements, was not supported (Table 3). In fact, there was a slight tendency for violations to occur more frequently in newspapers from states with press-bar agreements, although the relationship was not significant.

Table 3 About Here

Hypothesis 2, which suggested that sensational crimes are more likely to be reported with violations of ABA guide-

lines, could not be tested statistically because only a few stories fit the study's definition of sensationalism. There were only six stories classified as sensational. However, in line with the hypothesis, all six had guideline violations.[18]

Hypothesis 3, which suggested that minority group suspects are more likely to be reported with violations of ABA guidelines than white suspects, also could not be tested statistically because none of the 167 stories in the sample contained a racial identification of the suspect.

Hypothesis 4, which suggested that sources are less likely to be named when guidelines are violated, was not supported (Table 4). The rate of identification of sources was very nearly the same for stories with violations and stories without violations.

Table 4 About Here

Summary and Conclusions

This content analysis of pre-trial crime news stories in a national probability sample of newspapers found a rate of violation of ABA guidelines of 1.13 per story, with violations occurring in 67.7% of the stories.

This rate of violations is higher than a 1974 mail survey by the ABA would lead one to expect.[19] The ABA survey was limited to the 23 states having some form of formalized volun-

tary agreement for bar-media cooperation. In that survey, 56% of the local bar association representatives surveyed and 88% of the newspaper editors surveyed indicated the agreement was generally being followed in reporting news about crimes. The ABA survey, like two other surveys before it, has the disadvantage that it merely asked the opinions of journalists and others on how well the guidelines are being followed. The opinion surveys have usually indicated a strong consensus that the agreements were working reasonably well.[20] The present study, which has the advantage of looking directly at the content of newspapers, presents a different picture of the effectiveness of the guidelines. Not only are there violations in the states with guidelines, but there is no discernible difference in rate of violation of guidelines for states with agreements and states without agreements.

The two kinds of material thought to be most damaging to an accused person--confessions and prior criminal records--had two of the lowest rates of violation. Twelve percent of the stories violated the guideline against printing admissions, confessions or statements by the accused. When only those stories containing an admission or confession were counted, only 5.4% of the stories were found to contain violations. News of prior criminal charges and convictions were found in 12.6% of the stories.[21] Although these rates of violation are relatively low, the fact that nearly 18% of the stories con-

tained news of either an admission, confession, prior criminal charge or conviction suggests that the guidelines enjoy less than universal approval among editors.[22]

The guidelines that had the highest rates of violation are also the most subjective and the hardest for coders to apply. Coder reliability scores for guidelines "a" (concerning opinions about an accused's character, guilt or innocence), guideline "d" (concerning statements about the credibility or testimony of possible witnesses) and guideline "e" (concerning opinions about evidence or arguments in the case) were 57%, 58% and 52% respectively. In contrast, coder reliability scores for guideline "b" (concerning confessions), guideline "c" (concerning results of tests) and guideline "f" (concerning prior criminal charges and convictions) were 93%, 87% and 88% respectively. This suggests that guidelines "a", "d" and "e" might be difficult for a news reporter or editor to apply even if he or she was aware of them and wanted to follow them. People have difficulty agreeing on the interpretation of these guidelines.

The sample period of this study included the Bicentennial, and six of the 87 issues studied came from the Bicentennial weekend of July 3, 4 and 5. Whether this had any effect on the quantity or quality of crime news reporting is not clear. The period sampled did not have any mass murders or other major national crime stories. The most widely disseminated

crime news during the period dealt with the arrest of former Supreme Court nominee G. Harrold Carswell on a vice charge, the arrests of two Filipino nurses in Ann Arbor, Mich., on charges relating to hospital deaths and the arrests of several men in New England on charges of bombing public buildings. If there had been a national story of the scope of the "Son of Sam" case or the Manson murder case, the rate of violations might have been even higher. Also, a difference in rate between states with guidelines and states without might have become more apparent with a bigger, more sensational story. But the purpose of this study was to determine whether the guidelines were followed in reporting the average crime story.

As an almost incidental finding, the study indicates essentially no identification of race of the accused in general crime news reporting. This should be heartening to persons concerned that minority groups are being stereotyped through racial identification in crime news reports.

This study leads to the following recommendations:

1. That further study be given to the effectiveness of the press-bar agreements. Contrary to the findings of general opinion surveys that have been conducted, this study indicates some violation of ABA guidelines in newspaper content. Furthermore, it does not indicate any difference in rate of violation of guidelines in newspapers from states with voluntary agreements and states without.

A useful follow-up study could investigate whether states with guidelines tend to have fewer violations than states without in clearly sensational stories of great public interest such as the Berkowitz case. A study might be done of reporters and editors to see if they are aware of whether their state has agreements and, if so, how familiar they are with them.

2. That guidelines "a", "d" and "e" of the ABA composite fair trial-free press agreement might be rewritten, or at least presented with clarifying examples. The coder reliability evidence from this study indicates that people find these guidelines more difficult to apply than the other three.

Footnotes

[1]See, John Consoli, "New York Post Ignores Fair Trial Guidelines," Editor & Publisher, Vol. 110 (August 20, 1977), pp. 11, 32.

[2]Legal Advisory Committee on Fair Trial and Free Press, American Bar Association, Fair Trial/Free Press: Voluntary Agreements (1974), p. 32.

[3]Ibid., pp. 7-8. The six recommendations for information that should not be published are listed in Table 2.

[4]Rita J. Simon, "Does the Court's Decision in Nebraska Press Association Fit the Research Evidence on the Impact on Jurors of News Coverage?" Stanford Law Review, Vol. 29 (February 1977), p. 528; see also, Rita J. Simon, "Murder, Juries, and the Press," Trans-action, Vol. 3 (May-June 1966), pp. 40-42.

[5]Alice Padawer-Singer and Allen H. Barton, "The Impact of Pretrial Publicity on Jurors' Verdicts," in Rita James Simon, ed., The Jury System in America: A Critical Overview (Beverly Hills: Sage Publications, 1975), pp. 125-39, Alice Padawer-Singer, Andrew Singer and Rickie Singer, "Voir Dire by Two Lawyers: An Essential Safeguard," Judicature, Vol. 57 (April 1974), p. 386. For a review of the literature on the effects of prejudicial publicity, see, Simon, "Does the Court's Decision. . . Fit the Research Evidence," op. cit.,pp. 520-28.

Mary M. Connors, "Prejudicial Publicity: An Assessment," Journalism Monographs, No. 41 (September 1975), pp. 14-24.

[6]Padawer-Singer and Barton, "The Impact of Pretrial Publicity on Jurors' Verdicts," ibid.; Padawer-Singer, Singer and Singer, "Voir Dire by Two Lawyers," ibid., Walter Wilcox and Maxwell McCombs, "Crime Story Elements and Fair Trial/Free Press," unpublished report, University of California at Los Angeles, 1967, cited in Connors, "Prejudicial Publicity," op. cit., p. 20. Mary Dee Tans and Steven H. Chaffee, "Pretrial Publicity and Juror Prejudice," Journalism Quarterly, Vol. 43 (Winter 1966), p. 652.

[7]Sheppard v. Maxwell, 384 U. S. 333 (1966); Estes v. Texas, 381 U. S. 532 (1965), Rideau v. Louisiana, 373 U. S. 723 (1963). The court may be retreating from its presumption that pre-trial publicity is prejudicial. "Pretrial publicity," the Court said in 1976, "--even pervasive, adverse publicity--does not inevitably lead to an unfair trial." Nebraska Press Ass'n v. Stuart, 427 U. S. 539, 554 (1976).

[8]Thomas E. Eimermann and Rita James Simon, "Newspaper Coverage of Crimes and Trials: Another Empirical Look at the Free Press-Fair Trial Controversy," Journalism Quarterly, Vol. 47 (Spring 1970), p. 143.

[9]Robert S. Warren and Jeffrey M. Abell, "Free Press/Fair Trial: The 'Gag' Order, a California Aberation," Southern California Law Review, Vol. 45 (Winter 1972), p. 93.

[10]In Roy C. Mitchell, "Fair Trial--Free Press," Denver Law Journal, Special Magazine Issue (1971), p. 49.

[11]Ibid.

[12]American Bar Association, Fair Trial/Free Press: Voluntary Agreements, op. cit., p. 21.

[13]Ibid., p. 8.

[14]The newspaper sample is described more fully in David Lynn Pulford, "An Investigation of Newspaper Coverage of an American Medical Association National Convention," unpublished PH.D. dissertation, University of Texas at Austin, 1977.

[15]Wayne A. Danielson and John B. Adams, "Completeness of Press Coverage of the 1960 Campaign," Journalism Quarterly, Vol. 38 (Autumn 1961), pp. 441-52.

[16]The percentage of agreement was obtained by taking the number of stories found by both coders and dividing that by the number of stories found by both coders plus the number of stories found by coder A alone plus the number of stories found by coder B alone.

[17]The percentage of agreement for each pair of coders was found by taking the number of coding decisions they agreed upon and dividing it by the total number of coding decisions they made.

[18]Regardless of "sensationalism," stories dealing with sex or murder were more likely to contain a violation than stories dealing with other subjects. Almost three quarters

(74.1%) of the stories dealing with sex and murder had one or more violations. But the difference was not statistically significant.

[19]American Bar Association, Fair Trial/Free Press: Voluntary Agreements, op. cit., p. 12.

[20]Ibid.

[21]When stories containing confessions and stories referring to a suspect's criminal record were looked at separately, there was no statistically significant difference between newspapers from states with press-bar guidelines and states without. Six stories containing confessions were found in newspapers from states having press-bar agreements, three from states without agreements. Of the 21 stories referring to a suspect's criminal record, 11 appeared in newspapers from states with no agreements while 10 appeared in papers from states with agreements.

[22]Only one story was found to contain both an admission or confession and prior charges or convictions.

TABLE 1

Percentages of Stories Containing

Various Numbers of Guidelines

Violated

Number of Guidelines Violated	Percentage Of Stories
0	32.3%
1	33.9
2	16.2
3	9.0
4	3.6
5	0
6	0
	100.0%

TABLE 2

Percentage of Stories Containing Violations for Each of the Six ABA Guidelines

Guideline	Percentage of Stories Violating the Guideline
(c) References to results of tests such as fingerprints or polygraphs	2.4
(b) Admissions, confessions or statements by the accused	12.0
(f) Prior criminal charges and convictions	12.6
(d) Statements concerning the credibility or testimony of possible witnesses	24.0
(e) Opinions concerning evidence or arguments in the case, including whether such evidence or argument is likely to be used in trial	25.1
(a) Opinions about an accused's character, guilt or innocence	35.3

TABLE 3

Cross-Tabulation of Whether a Story Violated Any Guideline
By Whether It was Published in a State with a Press-Bar Agreement

	No Press-Bar Agreement	State Has Press Bar Agreement
Story Had No Violation	34.4%	29.9%
Story Had Some Violation	65.6	70.1
	100.0%	100.0%
	(90)	(77)

X^2=.2.2, 1df, p=.64

TABLE 4

Cross-Tabulation of Whether Sources Are Named

By Whether a Story Violated Any Guideline

	Story Had No Violation	Story Had Some Violation
No Source	66.7%	69.0%
Source	33.3	31.0
	100.0%	100.0%
	(54)	(113)

X^2=.02, 1df, p=.90